

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA

v.

PAUL J. MANAFORT, JR.,

Defendant.

Crim. No. 1:18-cr-83 (TSE)

**GOVERNMENT’S REPLY TO PAUL J. MANAFORT’S OPPOSITION TO
THE MOTION TO EXCLUDE EVIDENCE OR ARGUMENT ON CIVIL TAX AUDITS**

The United States of America, by and through Special Counsel Robert S. Mueller, III, hereby submits this reply to defendant Paul J. Manafort, Jr.’s (Manafort) opposition to the government’s motion to preclude the defense from presenting additional argument at trial, or soliciting evidence concerning, the absence of a civil Internal Revenue Service (IRS) audit of Manafort or his companies, suggesting that such an audit was necessary, or suggesting that the absence of such an audit was either improper, indicative of a lack of evidence, or indicative of selective prosecution or some other improper motive such that jury nullification would be appropriate.

The defense’s reference to audits in their opening statement was not made in an effort to explain Manafort’s willfulness. *See* Def. Opp. at 1. Rather, the defense’s references were focused on the government’s motive and knowledge, and the availability of a civil audit as an alternative to criminal tax charges. As cited in the government’s motion, below is the quotation from defense’s opening statement:

But in the **Government’s rush to judgment** in this case you’re going to learn that Mr. Manafort was never audited by the IRS, nor were any of his companies. So as you consider this, as you hear all the evidence come in, the documents and the

testimony, **you might ask yourself whether the Government knew enough to initiate the audit.** Did they have enough evidence? I mean, the government knows a lot about us, but **did they have enough evidence to even think about initiating an audit of Paul Manafort?**

7.31.18 Tr. at 44-45 (emphasis added). The defense's argument suggested to the jurors that the absence of a civil audit should lead them to conclude that the government lacks sufficient evidence of a crime or rushed to proceed criminally when it should have proceeded civilly. The cases the government cited in its motion establish that that inference is inappropriate.

To the extent defense counsel is now raising a new argument that such information is relevant as to whether Manafort was "concerned in speaking with government agents" in 2014, *see* Def. Opp. at 3, that specific concern can be addressed if Manafort decides to testify and the defense indicates it intends to elicit testimony on that specific point. The government notes that referencing the lack of an audit even in that context raises questions of relevance, confusion, and jury nullification. Those concerns have now only been heightened by the defense's opening statements.

Such a line of inquiry, however, would only be appropriate, if at all, for Manafort. And, accordingly, defense should be precluded from asking such questions or eliciting such testimony on cross examination of government witnesses.

Respectfully submitted,

ROBERT S. MUELLER, III
Special Counsel

Dated: August 3, 2018

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/s/_____

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2018, I will cause to be filed electronically the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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